

# **4 FAH-3 H-360 ACCOMMODATION EXCHANGE**

## **4 FAH-3 H-361 DEFINITIONS AND GUIDELINES**

### **4 FAH-3 H-361.1 Definitions**

*(TL:FMP-2; 4-30-95)*

a. An **accommodation exchange transaction** is the conversion of U.S. dollars into the currency of the host country (local currency) or another local currency. This transaction is also described as the selling of local currency by the cashier for U.S. dollars.

b. **Reverse accommodation exchange** is the exchange of local currency into U.S. dollars, or the purchasing of local currency by the cashier for U.S. dollars.

c. **Prevailing rate** is the most favorable rate that would be legally available to the U.S. Government for the acquisition of foreign currency for its official disbursements and accommodation exchange transactions.

### **4 FAH-3 H-361.2 Guidelines For Authorizing Accommodation Exchange**

*(TL:FMP-2; 4-30-95)*

a. The Principal Officer determines whether accommodation exchange services will be provided at the post. The Principal Officer considers the availability of U.S.-owned foreign currency in the country and satisfactory local banking facilities for obtaining the currency before determining if these services by the Disbursing Officer and Class B Cashier should be authorized.

b. The Principal Officer takes into consideration the following items as a minimum when determining if accommodation exchange services by the USDO and cashiers should be authorized:

(1) Individuals are required to obtain their foreign exchange through regular commercial banking facilities if such facilities are adequate and convenient, and arrangements can be made for the cashing of U.S. Treasury checks and personal checks. An exception may be made for newly-arrived permanent and temporary personnel whose stay is not of such duration to warrant setting up personal banking arrangements.

(2) When satisfactory local commercial banking facilities are available for the purchase of U.S. dollars with foreign currency, personnel should normally be required to use these facilities.

## **4 FAH-3 H-361.3 Scope Of Transactions**

### **4 FAH-3 H-361.3-1 Authorized Transactions**

*(TL:FMP-2; 4-30-95)*

a. When authorized, cashiers can conduct all types of accommodation exchange described herein. This accommodation exchange service is not a substitute for private banking, and transactions that can be handled through an individual's private bank or through a private banking service located at the embassy should not be authorized.

b. Cashiers are authorized to pay out foreign currency in exchange for U.S. currency and U.S. dollar instruments, as well as in exchange for foreign currency checks drawn by USDO's on official checking accounts. Cashiers may perform other accommodation exchange transactions only with special written authorization from the Financial Management Officer in conjunction with the USDO, such as conversion from one local currency to a different local currency. (See Serviced Post User Manual (SPUM) Cashier Appendix A Section 5.0 for special procedure.)

### **4 FAH-3 H-361.3-2 Compliance With Laws And Regulations**

*(TL:FMP-2; 4-30-95)*

Whenever accommodation exchange services are established, the Principal Officer or designee takes such action as may be necessary to assure that all accommodation exchange is performed in full compliance with U. S. Government and host government laws and regulations; and that all American Government personnel are familiar with the provisions in 3 FAM 4100 , Employee Responsibilities and Conduct and in 3 FAM 4100 Appendix A (Part 10 of Title 22 of the Code of Federal Regulations Section 10.735-206, Economic and Financial Activities of Employees Abroad.) The Principal Officer has the authority to require all U.S. Government employees to obtain their foreign currency through U.S. Government facilities when the officer deems it necessary in order to assure full compliance.

### **4 FAH-3 H-361.3-3 Cashing Negotiable Instruments**

*(TL:FMP-2; 4-30-95)*

a. In consultation with the servicing USDO, the post may set a per check or per day limit on the amount of foreign currency which can be purchased from the cashier without special approval. Normally checks other

than U.S. dollar Treasury checks or travelers checks over \$500 are cashed only if the presenter is:

—Payrolled or paid by a U.S. Government agency; or

—Is an employee of a U.S. Government contractor represented in the host country.

b. Checks may be cashed for other U.S. citizens who have been previously designated as having official business with the embassy, such as CODELS and STAFFDELS, only when approved by the Principal Officer or other designated official. Designations of such individuals are normally included in telegrams or other official communications from the Department, other agencies, or other embassies.

c. Dollar checks must be drawn on banks or branches located in the United States, made payable through a U.S. Bank.

d. Before cashing checks for accommodation exchange, cashiers must apply the same tests as for all check cashing, such as current dates, drawer's permanent address, endorsements, identification, and the other requirements of the Serviced Post User Manual Appendix A Section 5.4. Details of identification are entered on Form DS-1694, Exchange Transaction Record, to enable USDO's or cashiers to locate and communicate with individuals at a later date if necessary (See 4 FAH-3 H-366.1 ).

e. Checks originally accepted for accommodation exchange which are uncollectible are handled in accordance with SPUM Appendix A Section 8.0.

#### **4 FAH-3 H-361.3-4 Office Hours For Accommodation Exchange**

*(TL:FMP-2; 4-30-95)*

Accommodation exchange facilities are provided in a convenient manner to benefit all authorized persons. The office hours for all public transactions, including accommodation exchange, are described in 4 FAH-3 H-399.4. To promote the maximum sale of local currency in excess and near-excess currency countries, hours at least equal to those of commercial exchanges are desirable whenever practical, but within the established embassy hours. For employees located at distances from any present exchange facility, the most feasible arrangements should be made to provide accommodation exchange.

### **4 FAH-3 H-362 SALE OF FOREIGN CURRENCY**

#### **4 FAH-3 H-362.1 Persons Or Entities For Whom Accommodation Exchange Transactions Are Authorized**

##### **4 FAH-3 H-362.1-1 Eligible Individuals**

(TL:FMP-2; 4-30-95)

When the Principal Officer has authorized accommodation exchange transactions, foreign currency may be paid out for (a) U. S. dollars in the form of checks, drafts, bills of exchange, other instruments payable in U. S. dollars, and cash; and (b) in the same currency in which drawn, foreign currency checks drawn by USDOs on official depository accounts, for the accommodation of the following:

a. Civilian employees of the U.S. Government who are U.S. citizens, including direct hire, contract and those under an A.I.D. Participating Agency Service Agreement.

b. Members of the Armed Forces of the United States, when facilities are not available through military channels.

c. Contractors and subcontractors who are U.S. firms or citizens engaged on U.S. Government projects in foreign countries, and the personnel of such contractors who are U.S. citizens.

d. U. S. citizen personnel of authorized U.S. nongovernment organizations operating with agencies of the U.S. Government.

e. Dependents of individuals listed in items a. through d. under the following conditions:

—When the dependent who is a U. S. citizen presents a U.S. Treasury check payable to the presenter.

—When the dependent holds a valid power of attorney. The “Power of Attorney for Accommodation Exchange” in the SPUM Appendix A Section 5A is the suggested format for this purpose. However, any other valid power of attorney may be accepted if it contains substantially the same provisions.

f. Dependents of individuals listed in items a. through c. without powers of attorney, at safe haven posts to which ordered in an emergency evacuation, upon presentation of proper identification, up to a maximum of \$2,000 during the first month following evacuation and \$400 thereafter for all dependents of any one person in any month.

g. Third-country nationals (TCN) employed as civilian employees or under contracts of the U.S. Government or contractors or subcontractors who are U.S. firms engaged in U.S. Government projects in foreign countries; provided, that the checks presented by the third-country nationals are U.S. Treasury dollar checks or U.S. dollar checks issued by the contractors to the third-country national presenting the check for encashment.

h. U.S. citizen personnel of commissary, recreation, and mess facilities operated for post personnel.

i. Certain U.S. organizations or organizations sponsored by the U.S. Government where such exchanges (1) do not violate local government currency law, (2) promote the interest of the U.S. Government abroad, (3) do not adversely impact or impair the operations of the Embassy, and (4) are approved by the Department of State. An example would be to provide accommodation exchange to American schools to assist them in purchasing books and other supplies not available in the country.

#### **4 FAH-3 H-362.1-2 Cashing U.S. Treasury Checks Only**

*(TL:FMP-2; 4-30-95)*

Foreign currency may be paid out for U.S. dollar Treasury checks in countries where local commercial banks charge excessive fees in exchange transactions or unreasonably delay credit of deposits to personal accounts, when presented by the person to whose order drawn, for the accommodation of:

—Any U.S. citizen;

—Retired Foreign National employees of the U.S. Government when the Treasury checks cover payments of Civil Service annuities; or

—Local employees who have received U.S. Federal income tax refunds.

#### **4 FAH-3 H-362.2 All Other Local Currency Requirements**

*(TL:FMP-2; 4-30-95)*

In addition to covering the personal requirements of all authorized personnel, these rules apply to all other local currency requirements arising out of contractor and voluntary agency activities covered by the pertinent contract or agreement with, or approved by, the United States.

## **4 FAH-3 H-363 SALE OF UNITED STATES CURRENCY**

*(TL:FMP-2; 4-30-95)*

The sale of U.S. currency (i.e., cash) is regulated and limited in availability. Such U.S. currency may be sold for U.S. dollar negotiable instruments only in such amounts as may be required within locally established currency regulations, for the accommodation of U.S. citizen employees and other persons authorized accommodation exchange privileges under 4 FAH-3 H-362 , for the following purposes:

—For travel outside the country.

—When required to make cash purchases at authorized U.S. Government facilities such as commissaries, snack bars, and theaters.

—Except as authorized in above, the sale of U.S. currency to personnel remaining in the country is prohibited.

## **4 FAH-3 H-364 PURCHASE OF FOREIGN CURRENCY**

### **4 FAH-3 H-364.1 General Provisions**

*(TL:FMP-2; 4-30-95)*

Foreign currency may be purchased or repurchased by the cashier from persons to whom it was previously sold, upon departure from post only, in accordance with the provisions of this section. The purchase of such foreign currency is prohibited if the currency was acquired in violation of the spirit of the Department's policy governing business activities of personnel and their dependents (see 3 FAM 4100 ).

### **4 FAH-3 H-364.2 Authorized Purchases Of Foreign Currencies**

#### **4 FAH-3 H-364.2-1 From U.S. Government Employees**

*(TL:FMP-2; 4-30-95)*

Foreign currency may be purchased from civilian employees of the U.S. Government who are U.S. citizens, and members of the Armed Forces of the United States, only when the person is departing the post on transfer or home leave.

a. Departure on Transfer

(1) Purchase Without Advance Approval—The maximum amount which can be purchased by the USDO or cashier without requiring documentation from a person who is departing on transfer is the sum of the employee's salary and allowances as paid on the biweekly payroll for two biweekly pay periods. Foreign currency in excess of this limit may be purchased from a person upon receipt of a written application which has been approved in writing by the Principal Officer of the post or designee, subject to the limitations of 4 FAH-3 H-364.3 a and 4 FAH-3 H-364.4 . An application from personnel of agencies other than State must also be approved individually in writing by the highest ranking officer of the agency concerned, or their designee. The letter of application is addressed to the Principal Officer, and includes the following items:

—The amount of local currency in excess of the biweekly pay and allowances limit;

—The employee's anticipated departure date;

—A complete description of the source of the currency;

—A declaration that none of the currency was acquired in violation of local agency regulations or exchange control laws of the country concerned;

A request for approval to sell the local currency to the USDO.

(2) Purchase Requiring Advance Approval—Any foreign currency obtained from the sale of personal property is separately controlled by the provisions of 4 FAH-3 H-368 and can be purchased by the cashier only with the required approval of an authorizing officer. Post officials should consult with the servicing USDO about the approval of large exchange transactions, e.g., proceeds derived from the sale of employees' personal property, unless the USDO has previously provided standing guidelines for the post.

b. Departure on Home Leave—The purchase of foreign currency from a direct hire U.S. Government employee departing the post on home leave and return to the post is limited to the amount of any local currency acquired from the sale of personal property which the person plans to replace while on home leave. (see 4 FAH-3 H-368 ).

## **4 FAH-3 H-364.2-2 From Dependents of U.S. Government Employees**

*(TL:FMP-2; 4-30-95)*

Foreign currency may be purchased from the primary dependent of a U.S. Government employee cited in 4 FAH-3 H-364.2-1 a under the same conditions, when:

—The employee has died while assigned to the post;

—The employee has preceded their dependents in departure from the post, to the extent the employee has not used the privilege, i.e., the authorization in 4 FAH-3 H-364.2-1 a becomes a family authorization; and

—The dependent resides at other than the employee's duty station under separate maintenance allowance provisions. This does not affect the employee's authorization at their duty station.

## **4 FAH-3 H-364.2-3 From Contractors and TCN Personnel**

*(TL:FMP-2; 4-30-95)*

a. Foreign currency may be purchased from TCN personnel (TCN as defined in 3 FAM 7200 ); and from U.S. citizen personnel of contractors and subcontractors in U.S. firms or citizens engaged in Government projects in the country, subject to the check limitations in 4 FAH-3 H-362.1-1 g , and provided the individual was assigned to the country for a period of at least twelve (12) months and the individual is permanently leaving the country. This policy may be waived by the post without the approval of FMP when the employment qualifying the individual or firm is curtailed by the U.S. Government.

b. The policy governing conversion of foreign currency derived from the sale of individual personal property and the disposition of proceeds derived therefrom, is the same for persons in this category as for U.S. Government employees to the extent that such persons enjoy the diplomatic importation or tax privileges because of their contractual or employment relationship to the U.S. Government. (See 4 FAH-3 H-368 .)

## **4 FAH-3 H-364.2-4 From Other Individuals**

*(TL:FMP-2; 4-30-95)*

The purchase of foreign currency from individuals other than as authorized in 4 FAH-3 H-364.2-1 through 3 above is prohibited except that such currency may be repurchased from individuals to whom sold as authorized in 4 FAH-3 H-364.3 .



## **4 FAH-3 H-364.3 Repurchases of Foreign Currency**

*(TL:FMP-2; 4-30-95)*

a. Foreign currency may be repurchased from any person who acquired foreign currency from the disbursing facility as cited in 4 FAH-3 H-362.1 , provided:

—The person is permanently leaving the country; and

—The amount being repurchased is reasonable in view of the original purchase, duration of time spent in the country, and normal living expenses. The “reasonable” amount for persons who were temporarily or permanently domiciled in the country, such as personnel of nongovernment agencies, may in no case exceed the basic amount authorized in 4 FAH-3 H-364.2-1 a, i.e., the sum of the individual’s salary and allowances for two biweekly pay periods. The USDO, authorized cashier or Financial Management Officer may, when it is believed that the amount submitted for repurchase is questionable, require a satisfactory written explanation before purchasing the foreign currency.

b. The foreign currency may be purchased by the cashier with U.S. dollar Treasury checks(s) and/or cash. The amount of cash which may be issued is limited to the estimated requirements of the person and dependents (1) for travel to the United States or new post, provided that the exportation of U.S. cash is not prohibited or limited by local law, or (2) for local purchases under 4 FAH-3 H-363 .

c. The foreign currency is to be acquired at the USDO’s prevailing rate.

## **4 FAH-3 H-364.4 Limitation/Restrictions On Foreign Exchange Purchases**

*(TL:FMP-2; 4-30-95)*

a. Each of the above provisions is subject to limitations set by the Treasury Department to curtail exchange losses to the U.S. Government.

b. Disbursing officers will ensure that the amount of foreign currency purchased with U.S. dollars is commensurate with immediate disbursing requirements. If foreign currency can be readily obtained, the disbursing officer should purchase an amount which, together with the checkbook balance on hand at time of purchase, would not exceed estimated requirements for the ensuing 5 to 7 days. If foreign currency is not readily available, the purchase should be in an amount not exceeding that required for the ensuing seven days. Exceptions may be approved only by Treasury. (TFM 9050.20).

c. As a result of this limitation, the disbursing officer should establish with each serviced post any necessary guidelines and controls on currency purchases and collections made by the post, in order to prevent unduly large balances. This may include a requirement for the post to consult the USDO on major purchases or collections of foreign currency, such as that resulting from large proceeds of sales by employees, as detailed in 4 FAH-3 H-368 .

d. Purchase of foreign currency authorized by 4 FAH-3 H-364.2-1 a(2) derived from the sale of an individual's personal property is restricted to the provisions of 22 CFR Part 136 and Section 4 FAH-3 H-368 . (This purchase is in addition to the purchase of currency equivalent to two biweekly pay periods of salary and allowances authorized in 4 FAH-3 H-364.2-1 a(1).)

## **4 FAH-3 H-365 SPECIAL EXCHANGE ACTIVITIES**

### **4 FAH-3 H-365.1 Sale Of Local Currency To Military Disbursing Officers And Cashiers**

*(TL:FMP-2; 4-30-95)*

Military disbursing officers and cashiers must purchase their local currency from the USDO whenever it is beneficial to the U.S. Government, e.g., a better exchange rate is obtained through combined bulk buying of local currency. Military disbursing officers and cashiers may purchase their local currency from the USDO if the physical location or simplicity of the transaction makes this a preferred method. Where there is no advantage in buying local currency from the USDO, the purchase is made through local banking facilities.

### **4 FAH-3 H-365.2 Transactions In Support Of Binational Organizations**

*(TL:FMP-2; 4-30-95)*

The USDO may acquire foreign currency from local organizations and institutions participating in U.S. Government sponsored binational programs in nonexcess currency countries. Purchase must be at the prevailing rate, must not contravene local currency laws and must be for conversion to a U.S. Treasury dollar check to pay certain U.S. dollar obligations. In countries where local banking practices permit organizations to maintain U.S. dollar accounts, use of commercial banking facilities should be encouraged. Purchase of foreign currency from foreign national individuals of those organizations is prohibited.

## **4 FAH-3 H-366 RECORDING ACCOMMODATION AND OFFICIAL EXCHANGE TRANSACTIONS**

### **4 FAH-3 H-366.1 Exchange Transactions Record**

*(TL:FMP-2; 4-30-95)*

a. A complete record of all check cashing and exchange transactions, official as well as accommodation, is maintained on Form DS-1694, Exchange Transaction Record, by authorized cashiers. The record serves to identify persons using the facility, and to identify negotiable instruments in cases of loss in transit or return due to insufficient funds.

b. Form DS-1694 is illustrated in Section 5.5, Exhibit 5c Serviced Post User Manual Appendix A. The form is reproduced locally and retained at the post when completed. Separate records are maintained for dollars and for each kind of foreign currency at posts dealing in more than one foreign currency.

### **4 FAH-3 H-366.2 Exchange Transactions Voucher**

*(TL:FMP-2; 4-30-95)*

Exchange transactions are reported on Form OF-234 Exchange Transaction Accommodation Voucher, by type of exchange performed (see Serviced Post User Manual, Appendix A 5.6).

### **4 FAH-3 H-366.3 Accountability Record**

*(TL:FMP-2; 4-30-95)*

Amounts recorded as receipts and payments on Forms DS-1694 and OF-234 Exchange Transactions Voucher maintained by cashiers are totaled and posted to Form OF-209 Accountability Record.

## **4 FAH-3 H-367 INQUIRIES**

*(TL:FMP-2; 4-30-95)*

General questions and guidance concerning the application of the above policy and regulations should be addressed to FMP/F/FMS/FPMC. Specific questions or guidance concerning issues such as foreign currency exchange, foreign banking and international agreements related to foreign currency for the Department and other agencies should be addressed to FMP/F/IFS.

# **4 FAH-3 H-368 DISPOSITION OF EMPLOYEES' PERSONAL PROPERTY OVERSEAS AND CONVERSION OF PROCEEDS**

## **4 FAH-3 H-368.1 Authorities**

*(TL:FMP-2; 4-30-95)*

Title III, of the State Department Basic Authorities Act (22 U.S.C. 4341-4343, which is codified in 22 CFR 136, is the legislation covering disposition of employees' personal property overseas. Regulations implementing this statute are published in 22 CFR 136. See 4 FAH-3 H-368 Exhibit H-368.1 which includes the CFR in its entirety, since it gives detailed policy, definitions, and procedures for implementing the law at posts. The material below gives further instructions and a documentary record to be prepared at posts in order to provide a complete audit trail of transactions. Further references are in 3 FAH-1 H-4100 Appendix A (10.735-205).

## **4 FAH-3 H-368.2 Employees' Personal Property Sales Abroad**

*(TL:FMP-2; 4-30-95)*

a. Personnel under the authority of a Chief of Mission may sell their personal property with prior permission under controlled conditions before departure from post on transfer or home leave orders. Profits cannot be retained from the sale of items having more than minimal value to individuals who do not have customs or sales tax exemption status.

b. Detailed guidance is contained in the CFR for the mandatory post procedure required by the law. To insure that the intent as well as the letter of the law is followed, the post procedure should include at least the three essential steps described below. A sample three page form which can be adapted at post to record these steps and provide an official audit trail for both the post and the employee is contained in 4 FAH-3 H-368 Exhibit H-368.2. Although the post may adapt this form to local use, the exact language for the statements and certifications by employees and by authorizing officers must appear in any post version of the form.

c. The post procedure must provide control over all sales, whether or not a reverse accommodation exchange will be made. Post check-out procedures for departing employees should show that sales have been reported or that the employee certified no sales were made.

d. Although the term "employees" is used throughout the material which follows, the procedures apply equally to contractors who enjoy

importation or tax privileges because of their contractual relationship with the United States Government as provided in the CFR Section 136.6.

(1) Approval to sell based on the employee's list of proposed sale items and estimated sales prices, the authorizing officer determines that the sale will meet the Chief of Missions criteria for employees' personal property sales at that post. See 4 FAH-3 H-368 Exhibit H-368.2 Schedule A.

(2) Report of items sold, proceeds and profits. The employee reports the items sold, with amounts collected and resulting profits. Following the post procedure guidelines, the employee designates charitable recipients and amounts for the profits which cannot be retained, and certifies the completeness and accuracy of the entries. The authorizing officer verifies the amounts and proposed distribution of profits in accordance with post guidelines and approves the request for payments to designated recipients and the employee. See 4 FAH-3 H-368 Exhibit H-368.2 Schedule B.

(3) Reverse accommodation exchange Of proceeds. The employee deposits local currency proceeds (approved in step 2 above) with the cashier, who prepares the reverse accommodation exchange voucher for the authorized certifying officer. The form summarizing the entire set of approved sale transactions becomes an official record to back up the certified exchange transactions voucher and to assist the employee's tax reporting purposes. (See 4 FAH-3 H-368 Exhibit H-368.2 Schedules A and B).

#### **4 FAH-3 H-368.3 Number And Timing Of Reverse Accommodation Exchanges**

*(TL:FMP-2; 4-30-95)*

The post procedure will specify the number and timing of authorized currency conversions of sales proceeds which may be made for the employee. This is normally not more than two: one for sale of a privately owned vehicle, and one for all other proceeds. These conversions may be made in addition to the conversion of the two biweekly pay periods of local currency conversion authorized in 4 FAH-3 H-364.2-1 a (1 ).

#### **4 FAH-3 H-368.4 Post Procedure File**

*(TL:FMP-2; 4-30-95)*

A copy of the post procedure covering disposition of employees' personal property (implementing 22 CFR 136) is to be sent by the post to the post management officer of the regional bureau when first issued and whenever revised. This bureau copy is consulted by Department personnel when the post requests guidance or interpretation of the 22 CFR 136.

**4 FAH-3 H-369 UNASSIGNED**

## **4 FAH-3 H-368 Exhibit H-368.1**

### **DEPARTMENT OF STATE 22 CFR PART 136 PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD**

#### **SUMMARY:**

This action promulgates the final rule setting forth regulations governing disposition of personal property abroad by certain United States Government employees and contractors, and members of their families. As required by section 303(a) of the State Department's Basic Authorities Act (22 CFR 4343(a)), the purpose of these regulations is to ensure that employees and members of their families do not personally profit from transactions with persons not entitled to exemptions from import restrictions, duties, or taxes.

**EFFECTIVE DATE:** August 21, 1989

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. James Fishenden, Office of the Comptroller, Department of State, Telephone (703) 875-6397.

#### **SUPPLEMENTARY INFORMATION:**

On June 20, 1988, the State Department published interim regulations (53 FR 23188) on Personal Property Disposition at Posts Abroad. The comment period ended on August 20, 1988. Comments were received from Foreign Service posts abroad, an employee organization (American Foreign Service Association or "AFSA"), and several USG agencies whose employees are affected. Most of the comments received were critical of parts of the legislation, asked for clarification, or concerned tax implications. Only one minor change has been made to the interim regulations based on comments received. Comments are summarized below.

Section 136.4(g) of the interim regulations stipulated that for the purposes of computing profits on property dispositions, proceeds received and costs incurred in a foreign currency shall be valued in U.S. dollars at the time of receipt or payment. Use of these procedures was questioned by commenters. The section has been amended to provide that such conversion is only required when the purchase and sale occur in two different currencies. Profit on transactions involving goods both purchased and sold in the local currency will be calculated in the local currency rather than converting each part of the transaction to dollars before computing profit, as is required in all other transactions.

A number of comments were received which criticized the interim rule and the legislation as being unduly restrictive, or inequitable for USG employees. No regulatory relief could be provided along those lines, however, since the interim rule tracked the statute closely. The regulations already provide flexibility for chiefs of mission where the statute allows it.

For instance, it was asked if the rule could be changed to include interest or extraordinary maintenance expense in the calculation of the base price of an item. This could not be accomplished since base price (basis) and profit are defined in the statute. Similarly, the regulations cannot provide for averaging losses and profits on vehicle sales, as requested, since the law contains no such provision. Nor can they accommodate a request from AFSA and others to permit employees to retain any proceeds from the sale of personal property up to the fair replacement cost of the item sold.

The statute excludes from the definition of profit amounts contributed as charitable contributions. Commenters complained that since the IRS considers such receipts as realizable income, employees will be subject to taxes on all or part of money given to charity which they were required by the statute not to keep. The statute did not address the tax liabilities of employees, however, and does not allow retention of any profits, even to pay taxes on a capital gain, although this was suggested by several organizations and individuals.

## **E.O. 12991, Federal Regulations**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

## **Regulatory Flexibility Act**

These rules will not have a significant impact on a substantial number of small entities because they will affect only Federal employees and agencies.

## **Paperwork Reduction Act**

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

## **List of Subjects in 22 CFR Part 136**

Government employees, Foreign relations.

Accordingly, new part 136 is added to title 22 Code of Federal Regulations, as follows:

## **PART 136 PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD**



## **Sec.**

### **136.1 Purpose**

### **136.2 Authority**

### **136.3 Definitions**

### **136.4 Restrictions On Disposition Of Personal Property**

### **136.5 Chief Of Mission Policies, Rules Or Procedures**

### **136.6 Contractors**

## **Authority: 22 U.S.C. 4341**

### **136.1 Purpose**

The primary purpose of these regulations is to ensure that employees and members of their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes.

### **136.2 Authority**

Section 303(a) of the State Department Basic Authorities Act of 1956 authorizes the Secretary of State to issue regulations to carry out the purposes of Title III of that Act.

### **136.3 Definitions**

(a) **Basis** of an item shall include the initial price paid (or retail value at the time of acquisition if acquired by gift), inland and overseas transportation costs (if not reimbursed by the United States Government), shipping insurance, taxes, customs fees, duties or other charges, and capital improvements, but shall not include insurance on an item while in use of storage, maintenance, repair or related costs, or financing charges.

(b) **Charitable contribution** means a contribution or gift as defined in section 170(c) of the Internal Revenue Code, or other similar contribution or gift to a bona fide charitable foreign entity as determined pursuant to policies, rules or procedures issued by the chief of mission pursuant to 136.5(b).

(c) **Chief of mission** has the meaning given such term by section 102(e) of the Foreign Service Act of 1980 (22 U.S.C. 2902(3)).

(d) **Contractor** means: (1) An individual employed by personal services contract pursuant to section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)), pursuant to section 638(a)(3) of the Foreign Assistance Act of 1981 (22 U.S.C. 2396(a)(3)), or pursuant to any other similar authority including, in the case of an organization performing services under such authority, an individual involved in the performance of such service; and (2) any other individual or firm that enjoys exemptions from import limitations, customs duties or taxes on personal property from a foreign country in connection with performance of a contract for goods or service when such contract is with the United States Government or an agency or instrumentality thereof or when such contract is directly financed by grant assistance from the United States Government or an agency or instrumentality thereof and the individual or firm is a party to the contract, a subcontractor, or an employee of a contractor or subcontractor.

(e) **Employee** means an individual who is under the jurisdiction of a chief of mission to a foreign country as provided under section 297 of the Foreign Service Act of 1980 (22 U.S.C. 3927) and who is—

(1) An employee as defined by Section 2105 of Title 5, United States Code;

(2) An officer or employee of the United States Postal Service or of the Postal Rate Commission;

(3) A member of a uniformed service who is not under the command of an area military commander, or

(4) An expert or consultant as authorized pursuant to Section 3109 of Title 5, United States Code, with the United States or any agency, department, or establishment thereof; but is not a national or permanent resident of the foreign country in which employed.

(f) **Family member** means any member of the family of an employee who is entitled to exemption from import limitation, customs duties, or taxes which would otherwise apply by virtue of his or her status as a dependent or member of the household of the employee.

(g) **Foreign country** means any country or territory, excluding the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, American Samoa, Guam, the Virgin Islands, and other territories and possessions of the United States.

(h) Except as otherwise provided by a chief of mission in policies, rules or procedures issued pursuant to 136.5(b), a time shall be deemed of "minimal value" if its acquisition cost in U.S. dollars (or retail value if received as a gift) is within the limit determined by the Administrator of General Services for "minimal value" of foreign gifts under 5 U.S.C. 7342, currently \$180. For purposes of determining "minimal value", all constituent parts of components of an audio or visual system, automobile, boat, computer system or other integrated machine, system or item of equipment must be valued as a single item even if acquired separately, except that spare or superseded parts (e.g. and old set of tires that has been replaced on vehicle) may be valued as separate items.

(i) Personal property means any item of personal property, including automobiles, computers, boats, audio and video equipment and any other items acquired for personal use, except that items properly determined to be of "minimal value" shall not be subject to limitations on disposition except for purposes of 136.4(d) or as prescribed in policies, rules or procedures issued by a chief of mission.

(j) Profit means any proceeds (including cash and other valuable consideration but not including amounts of such proceeds given as charitable contributions) for the sale, disposition or assignment of personal property in excess of the basis for such property.

#### **136.4 Restrictions On Dispositions Of Personal Property**

(a) An employee or family member shall not sell, assign or otherwise dispose of personal property within a foreign country except with the prior written approval of the chief of mission or designee, except where the category of dispositions has been authorized to be undertaken without prior written approval in policies, rules or procedures issued by the chief of mission (cf. 136.5(b)(1)).

(b) An employee or family member shall not retain any profit from the sale, assignment or other disposition within a foreign country of personal property that was imported into or purchased in that foreign country and that, by virtue of the official status of the employee, was exempt from import restrictions, customs duties, or taxes which would otherwise apply, when such sale, assignment or other disposition is made to persons not entitled to exemptions from import restrictions, duties, or taxes. An employee or family member shall not profit from an indirect disposition to persons not entitled to such exemptions, such as sale through a third country diplomat acting as a middleman, where the employee or family member knows or should know that the property is being acquired by the third party for resale to persons not entitled to exemptions, except that this restriction shall not apply to sales of personal property to official agencies of the foreign country in accordance with the laws or regulations of that country.

(c) Profits obtained from dispositions of personal property by an employee or family member that cannot be retained under paragraph (b) of this section including any interest earned by the employee or family member on such profits, shall be disposed of within 90 days of receipt by contribution or gift as defined in section 170(c) of the Internal Revenue Code or by other similar contribution or gift to a bona fide charitable foreign entity as designated by the chief of mission pursuant to 136.5(b)(11) of this part.

(d) Except as authorized in advance by the chief of mission on a case-by-case basis, no employee or family member shall sell, assign or otherwise dispose of personal property within a foreign country that was not acquired for bona fide personal use. There shall be a presumption that property that is new, unused or held by the employer or family member in unusual or commercial quantities was not acquired for bona fide personal use. For purposes of this subsection, there is no exemption for items of minimal value 136.3(h).

(e) No employee or family member shall import, sell, assign or otherwise dispose of personal property within a foreign country in a manner that violates the law or regulations of that country or governing international law.

(f) Violations of the restrictions or requirements of paragraphs (a) through (e) of this section shall be grounds for disciplinary actions against the employee in accordance with the employing agency's procedures and regulations. Employees shall be responsible for ensuring compliance with these regulations by family members.

(g) For purposes of computing profits on personal property dispositions subject to these regulations, where acquisition and disposition of the property were transacted in different currencies, proceeds received and costs incurred in a foreign currency shall be valued in United States dollars at the time of receipt or payment at the rate of exchange that was in effect for reverse accommodation exchanges at U.S. missions at the time of such receipt or payment. Where property was acquired and sold in the same currency, no conversion is required.

### **136.5 Chief Of Mission Policies, Rules Or Procedures**

(a) Each chief of mission shall establish a procedure under which employees may request approval for the sale of personal property and for conversion of proceeds of such sale from local currency into U.S. dollars, if applicable. This procedure may be modified to meet local conditions, but must produce a documentary record to be held by the post of the following:

(1) The employee's signed request for permission to sell personal property, and, if applicable, to convert local currency proceeds to U.S. dollars;

(2) A description of each item of personal property having more than minimal value, and the cost basis and actual sales price for each time;

- (3) All profits received and whether profit is retainable;
- (4) Donation to charities or other authorized recipients of non-retainable profits;
- (5) Approvals to sell and, if applicable, to exchange proceeds, with any restrictions or refusals of the employee's request noted, signed by the chief of mission or designee; and
- (6) For privately owned vehicle transactions, data on purchaser and statement that customs requirements have been met and title has been transferred or arranged with an agent identified on document.

(b) In order to ensure that due account is taken of local conditions, including applicable laws, markets, exchange rate factors, and accommodation exchange facilities, the chief of mission to each foreign country is authorized to establish policies, rules, and procedures governing the disposition of personal property by employees and family members in that country under the chief of mission's jurisdiction. Policies, rules and procedures issued by the chief of mission shall be consistent with the general restrictions set forth in 136.4 and may include at least the following:

- (1) Identification of categories of dispositions (e.g., sales of minimal value items) that may be made without prior written approval;
- (2) Identification of categories of individuals or entities to whom sales of personal property can be made without restrictions on profits (e.g., other employees, third country diplomats), individuals or entities to whom sales can be made but profits not retained, and individuals or entities to whom sales may not be made;
- (3) Requirements to report the total estimated and actual proceeds for all minimal value items, even if such items are otherwise exempted from limitations on profits of sale;
- (4) Categories of items of personal property excluded from restriction on disposition because generally exempt from taxation and import duties under local law;
- (5) More restrictive definition of "minimal value" (see 136.3(h) of this part);
- (6) Limitations on manner of disposition (e.g., restrictions on advertising or yard sales);
- (7) Limitations on total proceeds that may be generated by dispositions of personal property, including limitations on proceeds from disposition of "minimal value" items;

(8) Limitations on total profits that may be generated by dispositions of personal property, including limitations on profits from dispositions of “minimal value” items;

(9) Limitations on total proceeds from dispositions of personal property that may be converted into dollars by reverse accommodation exchange;

(10) Limitations on the timing and number of reverse accommodation exchange permitted for proceeds of dispositions of personal property (e.g., only in last six months of tour and no more than two exchange conversions);

(11) Designation of bona fide charitable foreign entities to whom an employee or family member may donate profits that cannot be retained under these regulations;

(12) Designation of post officials authorized to approve on behalf of chief of mission employee requests for permission to sell personal property and requests to convert local currency proceeds of sale to U.S. dollars by reverse accommodation exchange.

(c) All policies, rules, and procedures that are issued by the chief of mission pursuant to paragraphs (a) and (b) of this section shall be announced by notice circulated to all affected mission employees and copies of all such policies, rules and procedures shall be made readily accessible to all affected employees and family members.

(d) Violations of restrictions or requirements established by a chief of mission in policies, rules, or procedures issued by a chief of mission pursuant to paragraphs (a) and (b) of this section shall be grounds for disciplinary actions against the employee in accordance with the employing agency’s procedures and regulations. Employees shall ensure compliance by family members with policies, rules or procedures issued by the chief of mission.

### **136.6 Contractors**

To the extent that contractors enjoy importation or tax privileges in a foreign country because of their contractual relationship to the United States Government, contracting agencies shall include provisions in their contracts that require the contractors to observe the requirements of these regulations and all policies, rules, and procedures issued by the chief of mission in that foreign country.

Lawrence S. Eagleburger  
Acting Secretary of State

# 4 FAH-3 H-368 Exhibit H-368.2 SAMPLE COVERING MEMO

TO : (Designated Authorizing Officer)  
FROM : (Individual Requesting Approval to Sell/Convert)  
SUBJECT : Approval to Sell and Convert Proceeds  
REFERENCE : (a) Post Reference; (b) 4 FAM 368; (c) 22 CFR 16

Approval is requested to sell and convert the proceeds from personal property sales which were carried out in conformance with local law, U.S. law, State Department and post regulation. The attached Schedules A & B are submitted as official documents to record financial transactions resulting from the sale and necessary approval confirming that all requirements are met.

This form records the sales in local currency units (LCU). When sales are in both dollars and local currency, separate forms are used, with one form to show dollars. The dollars entries from all Schedule B lines 5B & 7 are combined where a dollar check is due for the same payee.

The following definitions are used in submitting this form:

**COST BASIS**—Initial price paid (or market value if acquired by gift or inheritance), cost of inland/overseas transportation (if not USG reimbursed), shipping insurance, taxes, duties, customs fees, or other such charges, and capital improvements, but not for insurance on items in use or for storage maintenance, repair or related costs, or financing charges. I WILL PROVIDE EVIDENCE OF THESE COSTS IF REQUESTED BY THE APPROVING OFFICER.

**MINIMAL VALUE**—Acquisition cost in U.S. dollars (or retail value if by gift) is within the limit set by the Administrator of General Service for “minimal value” of foreign gifts under 5 U.S.C. 7342. currently \$180 according to the Financial Management Officer or Administrative Counselor.

**UNRETAINABLE GAIN (PROFIT NOT RETAINABLE)**—The profit amount is the sale price (Col 5) less the cost basis (Col 6). Whether an employee may retain profit is determined by the buyer status of exemption, Departmental guidelines and post regulations. If a sale of any item was to an exempt person or entity, or profit is otherwise retained, the amount is entered in Col 6, and the buyer's name and exempt status are shown in Col 7.

## PROFIT VERIFICATION & REVERSE ACCOMMODATION EXCHANGE APPROVAL (Schedule A & B)

\_\_\_\_\_ The amounts and recipients of nonretinable profit and retainable roceeds have been verified and accepted, except for the following: \_\_\_\_\_

\_\_\_\_\_ LCU amounts in Schedule B (Lines 5B & &) are approved for reverse accommodation exchange payable as shown: OR

\_\_\_\_\_ Conversion of LCU and/or payment in dollars is limited by post regulations to the following allowed maximums: LCU converted: \_\_\_\_\_

\_\_\_\_\_ Dollar Payment: \_\_\_\_\_

\_\_\_\_\_ Other instructions to certifying officer: \_\_\_\_\_

\_\_\_\_\_ Other comments for the audit file: \_\_\_\_\_

Authorizing Officer & Date: \_\_\_\_\_

## SCHEDULE A-SUMMARY OF PROPOSED AND ACTUAL SALE

Employees: _____ Post of Assignment: _____ Projected Departure: _____ I request approval to dispose of the following personal property. I understand that the sale and any later conversion of proceeds to dollars must be conducted in accordance with U.S. and local laws and all relevant regulations issued by the Department of State and the post as referenced above. I understand further that violations of these regulations shall be grounds for disciplinary action and may also involve civil and criminal penalties.						
REQUEST TO SELL				ACTUAL SALE		
Complete Columns (1) Through (4) Before Sale				Complete Columns (5) Through (7) After Sale		
(1) Property Description	(2) Date Ac- quired	(3) Est. Sale Price (LCU)	(4) Cost Basis (LCU)	(5) Act. Sale Price (LCU)	(6) Unretainable Gain (LCU)	(7) Purchaser's Name/Title
1. Vehicle Description						
2. Items with Acquisition Cost over \$ _____ Minimal Value						
Subtotal Items Over Minimal Value						
3. Items with Acquisition Cost of \$ _____ Minimal Value or Less Total of All Items _____						
4. Total of all Proceeds (1+2+3 above) _____						
Request for Approval to Sell: _____ Verified Correct: _____						
Employee Signature/Date _____				Employee Signature/Date _____		
APPROVAL TO SELL; The proposed sale above complies with host country laws or regulations, any governing international law, and with U.S. law, Department of State and post regulations. Approval is granted to sell, except for items: _____						
Authorizing Officer/Date _____						



## SCHEDULE B-DISPOSITION OF SALES PROCEEDS AND REQUEST FORM

### REVERSE ACCOMMODATION EXCHANGE

Employee: \_\_\_\_\_

I request approval to convert proceeds for the sale into U.S. dollars as shown below. I certify that, to the best of my knowledge and belief, all of the statements made and documents submitted to support this request for approval for sale of personal property and conversion of proceeds into U.S. dollars, if applicable, are true, correct, complete, and are made in good faith. I understand that a false statement on any part of this request may be grounds for criminal prosecution including imprisonment for not more than five years or a fine of not more than \$10,000, or both, civil penalties and/or disciplinary action.

1. Total	:	LCU proceeds collected	(Schedule A, Col 5, Line 4		LCU
2. Subtract	:	LCU profit not retainable by employee	(Schedule A, Col 6, Line 4	-	LCU
3. Equals	:	LCU proceeds retainable by employee	Line 1 minus 2 above	=	LCU
4. Subject	:	LCU held out by employee for use before departure		-	LCU

#### PROFIT NOT RETAINABLE

5A. Balance	:	LCU profit not retainable (Line 2 above _____ LCU
6A. Subtract	:	Profit donated to an approved recipient (receipt for donation is attached) _____ LCU
7. Balance	:	LCU remaining profit unretainable to be converted to a dollar check for donation to another recipient (Line 5A minus Line 6A above) _____ LCU
8. Convert	:	<div style="display: flex; justify-content: space-between;"> <div>                     Prevailing Rate                      LCU _____ to \$1.00                      Payee (Donee) _____                      Address _____                      _____                      _____                 </div> <div>                     Dollar Check                      \$ _____                      _____                      _____                      _____                 </div> </div>

#### PROCEEDS RETAINABLE

5B. Balance	:	LCU retainable proceeds which can be converted by reverse accommodation exchange to a dollar check to employee (Line 3 minus Line 4 above) _____ LCU
6B. Convert	:	<div style="display: flex; justify-content: space-between;"> <div>                     Prevailing Rate                      LCU _____ to \$1.00                      Payee (employee) _____                      Address _____                 </div> <div>                     Dollar Check                      \$ _____                 </div> </div>

9. Schedule B Verified Correct. Request Approval of Conversion of Items 6B and 8.

Employee Signature/Date \_\_\_\_\_

10. Conversions 6B and 8 Approved Except as Follows:

Approving Officer: \_\_\_\_\_

Signature/Date

